

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITE HERE RETIREMENT FUND, ET  
AL.,

Plaintiffs,

v.

CITY OF SAN JOSE, et al.,

Defendants.

Case No. [5:20-cv-06069-EJD](#)

**ORDER GRANTING PLAINTIFF'S  
MOTION TO STAY**

Re: Dkt. No. 60

Plaintiff Unite Here Retirement Fund initiated this suit seeking a judicial determination that Defendant City of San Jose or Defendant Dolce San Jose ("Dolce") is the "employer" for purposes of the imposition of withdrawal liability within the meaning of Section 4212(a) of ERISA, 29 U.S.C. § 1392(a). Pending before the Court is Plaintiff's motion to stay the processing of the demand for arbitration ("Demand") that was filed by Dolce with the American Arbitration Association ("AAA"). Dkt. No. 60.

On January 20, 2021, Dolce filed an opposition to the motion to stay. Dkt. No. 62. Dolce's opposition essentially restates the argument Dolce previously raised in its motion to dismiss: that pursuant to ERISA's mandatory arbitration provisions, the determination of who is an "employer" under ERISA must be arbitrated rather than adjudicated by this Court. Dkt. No. 46. The Court rejected Dolce's argument and by order dated January 28, 2021, the Court denied Dolce's motion to dismiss. Dkt. No. 64.

Inasmuch as the Court has already determined that employer status under ERISA is an issue for judicial determination, not arbitration, and Dolce has not presented any other issues that are ripe for arbitration at this stage in the proceedings, Plaintiff's motion to stay the AAA

Case No.: [5:20-cv-06069-EJD](#)  
ORDER GRANTING PLAINTIFF'S MOTION TO STAY

1 arbitration is GRANTED. The AAA arbitration is stayed pending further order of the Court.

2 The April 15, 2021 hearing is vacated.

3 **IT IS SO ORDERED.**

4 Dated: April 6, 2021



EDWARD J. DAVILA  
United States District Judge

United States District Court  
Northern District of California